

OKY CHRONO
LEG

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OLL #85-0584/1

STAT

MEMORANDUM FOR: Chief, Management Staff/DDS&T
Chief, EPS []/DDO
Assoc General Counsel for Intelligence Law/OGC

FROM: []
Deputy Chief, Legislation Division/OLL

SUBJECT: Foreign Surveillance Prevention Act of 1985 STAT
S. 12

Introduction

1. We have been asked to comment on proposed legislation entitled the "Foreign Surveillance Prevention Act of 1985" (S. 12). So that we may provide a timely response, please provide written comment by March 6, 1985.

Legislative Analysis of S. 12

2. Section 3, beginning on page 2, is the heart of the bill. Once the President obtains information that a foreign diplomat is conducting electronic surveillance in the United States, such information should be reported to the Judiciary and Intelligence Committees of the Congress (Sec. 3(a)). In addition, the President would be required to inform the targets of the surveillance (Sec. 3(b)). Finally, the Ambassador of that foreign power whose diplomat is conducting the surveillance should be told to cease such activity (Sec. 3(c)). If the surveillance does not stop within thirty days, the errant diplomat shall be declared persona non grata (Sec. 3(d)). However, the President is entitled to ignore these requirements if sources and methods would be seriously harmed.

State Department Reply

3. State is on record in opposition to the bill because it reduces Presidential flexibility in the conduct of foreign affairs. Furthermore, our diplomatic and intelligence persons abroad may suffer some form of retaliation if the bill were to

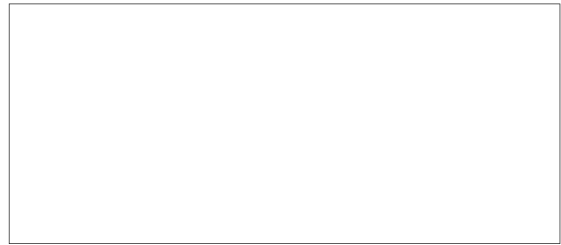
become law. The State Department also observes that this matter is already addressed in the US Criminal Code and in treaty. A copy of their reply is attached herewith for your information.

Other Considerations

4. Perhaps we can also conclude that once targets of foreign surveillance are informed of their status under Section 3(c), the Agency would become unnecessarily embroiled in disclosure litigation. Another uncertainty contained in the bill is the precise meaning of the terms "seriously compromise sources and methods" in Sections 3(b) and 3(c) of S. 12. It seems to suggest that minor damage to sources and methods can be tolerated. The same concern holds true for the terms "serious damage to national security" in Section 3(d).

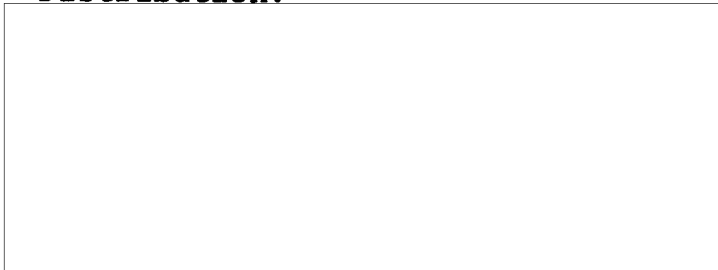
5. Senator Moynihan introduced a similar bill on November 18, 1981 (S. 1860).

Attachments:
As stated



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